

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BRUCE DERRICK CALHOUN,

Plaintiff,

vs.

SAN DIEGO COUNTY, et al.,

Defendants.

CASE NO. 10cv0434 DMS (WVG)

**ORDER GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING COMPLAINT
WITH PREJUDICE FOR FAILING
TO STATE A CLAIM UPON
WHICH RELIEF CAN BE
GRANTED PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii)**

Plaintiff, a non-prisoner proceeding *pro se*, has submitted a Complaint, Motion and Declaration Under Penalty of Perjury in Support of Motion to Proceed *In Forma Pauperis* (“IFP”), and a request for appointment of counsel.

Motion to Proceed IFP

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). This Court finds Plaintiff’s affidavit of assets is sufficient to show he is unable to pay the fees or post securities required to maintain this action. *See* Civil Local Rule 3.2(d). Accordingly, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a).

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3 **Sua Sponte Screening per 28 U.S.C. § 1915(e)(2)**

4 Notwithstanding payment of any filing fee or portion thereof, a complaint filed by any person
 5 proceeding IFP pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and *sua sponte* review and
 6 dismissal by the court to the extent it is frivolous, malicious, fails to state a claim upon which relief
 7 may be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §
 8 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C.
 9 § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
 10 (en banc). Prior to its amendment by the Prison Litigation Reform Act, the former 28 U.S.C. §
 11 1915(d) permitted *sua sponte* dismissal of only frivolous and malicious claims. *Id.* at 1130. The
 12 newly enacted 28 U.S.C. § 1915(e)(2), however, mandates that the court reviewing a complaint filed
 13 pursuant to the IFP provisions of section 1915 make and rule on its own motion to dismiss before
 14 directing that the complaint be served by the U.S. Marshal pursuant to Fed. R. Civ. P. 4(c)(2). *Lopez*,
 15 203 F.3d 1127 (“[S]ection 1915(e) not only permits, but requires a district court to dismiss an in forma
 16 pauperis complaint that fails to state a claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194
 17 (9th Cir. 1998) (noting the “the language of § 1915(e)(2)(B)(ii) parallels the language of Federal Rule
 18 of Civil Procedure 12(b)(6).”).

19 As currently pleaded, Plaintiff’s complaint is subject to *sua sponte* dismissal under 28 U.S.C.
 20 § 1915(e)(2)(B)(ii) because it fails to state a claim upon which relief may be granted. Because “it is
 21 absolutely clear that the deficiencies of the complaint could not be cured by amendment,” the Court
 22 dismisses the complaint with prejudice. *Franklin v. Murphy*, 245 F.2d 1221, 1228 n.9 (9th Cir. 1984).

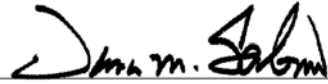
23 **Conclusion and Order**

24 For these reasons, **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Proceed IFP is
 25 **GRANTED** and the Complaint is **DISMISSED** with prejudice for failure to state a claim.¹

26 **IT IS SO ORDERED.**

27
 28 ¹ In light of the Court’s dismissal of Plaintiff’s Complaint, the Court denies Plaintiff’s request
 for appointment of counsel as moot.

1 DATED: April 22, 2010



HON. DANA M. SABRAW
United States District Judge

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